



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-101646

AUG 16 1979

The Honorable Fernand J. St Germain
House of Representatives

Dear Mr. St Germain:

This responds to your question about disclosures of appraisals of surplus United States Government property prior to sale under the provisions of the Federal Property and Administrative Services Act of 1949, as amended, (Property Act) 40 U.S.C. §§ 471 et seq. (1976). Specifically, you questioned the propriety of using public funds for appraisals of surplus property, generally made by outside appraisers, the results of which are treated as confidential by the General Services Administration (GSA) and are unavailable to the public.

You state that --

"This policy often causes difficulty for the purchaser, who would like to know how GSA arrived at its asking price. In some cases, for instance, the appraiser has mistakenly included additional property in his estimate, but the purchaser has had no way to find the error."

We solicited and received comments from the GSA on its matter.

The GSA states that, as a matter of established policy, it routinely withholds these appraisal reports from the public until after the proposed sale is consummated because --

"Disclosure of this information prior to making such a sale would obviously place the Government at a competitive disadvantage in disposing of its property. Pre-sale access to appraisal reports that establish an opinion on the value of the surplus Government property would effectively set the ceiling price to be offered by prospective purchasers and thus prevent the Government from obtaining through arms-length bargaining a more favorable price."

For reasons set forth below, we conclude that it is proper for GSA to use public funds for surplus property appraisals, the results of which are not made available to the public.

Nothing in the Property Act specifically restricts the availability of appraisers' reports. However, it is our opinion that the Administrator may restrict the availability of such reports pursuant to the broad authority conferred by the Act to negotiate sales of surplus property on behalf of the United States on as advantageous terms as possible.

Under section 203 of the Property Act, 40 U.S.C. § 484, the Administrator of GSA is authorized to supervise and direct the disposition of surplus property --

"* * * to such extent, at such time, in such areas, by such agencies, at such terms and conditions, and in such manner, as may be prescribed in or pursuant to this Act."

Pursuant to this authority, Public Building Service Instruction P 1005.5 (April 19, 1977) sets forth GSA policy with regard to the appraisal of surplus property. That Instruction specifically states that --

"Appraisal reports or parts thereof shall not be released or divulged to other than employees of GSA, or other Government agencies requesting appraisal services, without prior approval of the Central Office. Appraisers must not divulge their findings and opinions to anyone except authorized officials of GSA." Chapter 6, section 4.

The Property Act provides GSA with much latitude in supervising and directing the disposition of surplus property. As a matter of policy, GSA believes that the withholding of appraisal reports is in the Government's interest. That seems a reasonable decision, in view of the effect release of the reports could have on the price.

We also note that although the Freedom of Information Act (FOIA) recognizes the public's right to obtain a broad range of official information, it has been held that appraisal reports are exempt from disclosure under 5 U.S.C. § 552(b)(5). That section provides that disclosure is not required as to --

"* * * inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency."

In Martin Marietta Aluminum, Inc. v. Administrator, General Services Administration, 444 F. Supp. 945 (C.D. Calif., 1977), the Court stated:

"The two requirements that must be met for this exemption to apply to specific information are: (1) the information must be contained in inter-agency or intra-agency documents, and (2) the information must be non-discoverable during litigation between the agency and a private party." Id., 949.

It was the Court's view that --

"* * * the appraisers' reports should properly be considered as intra-agency documents because they were prepared at the request of a federal agency for its use in determining the selling price of government property." Id.

The Court stated that the second requirement refers to material discoverable under the Federal Rules of Civil Procedure by a private party in litigation with the agency. It noted that --

"Confidential intra-agency advisory opinions which, if disclosed, would harm the Government's decision-making function are normally privileged in civil discovery proceedings.* * * Id.

Thus, in order to satisfy the second requirement, it must be shown that appraisal reports are privileged because they contain opinions or recommendations used by governmental agencies in the decision-making process. Id.

The court concluded that portions of appraisers' reports describing the appraised equipment, explaining the methodology, and stating the appraisers' estimates of value, fall within the exemption set out in 5 U.S.C. § 552(b)(5), because the Government would be severely handicapped in attempting to sell property if potential buyers were routinely given pre-sale access to appraisers' reports prepared by or for governmental agencies. Additionally, it noted that --

"* * * the appraisers' opinion on value would most likely set the ceiling price offered by a purchaser, thereby effectively preventing the agency from obtaining through arms-length bargaining a more favorable price--one presumably obtainable by a private seller negotiating competitively with a prospective purchaser." Id. 950.

(Compare General Services Administration v. Benson, 415 F.2d 878 (9th Cir. 1969), in which appraisers' reports were ordered released. In Benson,

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however, the sale had already taken place so the release had no effect on the Government's ability to sell at a favorable price; the successful purchaser sought the reports only for their bearing on his income tax liability arising from the sale of the property which he bought from the Government.)

Accordingly, we conclude that GSA's use of public funds for surplus property appraisals that are not made available to the public prior to the sale is proper.

Sincerely yours,

R. F. KELLER

Deputy Comptroller General
of the United States

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Digest

General Services Administration's (GSA) use of public funds for appraisals of surplus Government property by outsiders, results of which are not disclosed to public prior to sale is proper. GSA may restrict availability of such reports pursuant to broad authority of Federal Property and Administrative Services Act of 1949, as amended, 40 U.S.C. *aa* 471 et eq. (1976). Appraisal reports, prior to sale, have been held judicially to fall under 5 U.S.C. *a* 552(b)(5) (1976), one of exemptions in Freedom of Information Act.